

STATE OF IOWA

BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

**CLOSED HEARING**

SPURGEON M. SMIDT,

Appellant,

and

STATE OF IOWA (DEPARTMENT OF  
CORRECTIONS),

Appellee.

89-MA-02

ADJUDICATOR'S DECISION

APPEARANCES

For the Appellant:

Carolyn Coleman, Attorney at Law  
Spurgeon M. Smidt, Appellant

For the Appellee:

Herbert Rogers, Sr., Attorney at Law  
Harry W. Cannon, Deputy Director, Iowa Department of  
Corrections  
Barbara Olk, Superintendent, Iowa Correctional Institute  
for Women  
Janet Craig, Acting Supervisor, Iowa Prison Industries

I. JURISDICTION

Pursuant to section 19A.14(1), Code of Iowa (1987) and 621 Iowa Admin. Code, Chapter 11 (1988), Spurgeon M. Smidt (hereinafter Smidt or Appellant) appeals his termination from the position of State Industries Supervisor for Iowa Prison Industries (hereinafter IPI), located at the Iowa Correctional Institute for Women (hereinafter ICIW) in Mitchellville, Iowa. A closed hearing on Smidt's appeal was held on May 25, 1989, at the Public Employment Relations Board (hereinafter PERB). The hearing was recorded by a certified shorthand reporter. The parties were given full opportunity to present evidence and arguments, and the parties filed briefs.

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## II. ISSUE

The issue in this case is whether the State of Iowa, ~~factually~~ the Department of Corrections (hereinafter State) had just cause to ~~dismiss~~ the Appellant.

## III. FINDINGS OF FACT

Iowa Prison Industries is a division of the Iowa Department of Corrections. IPI has manufacturing plants located in four of Iowa's prison sites, one of which is ICIW. The Mitchellville location houses the printing and silk-screen shops. At Mitchellville, IPI employs a State Industries Supervisor, three industry technicians, and inmate employees ranging in number from 9 to 25.

The Appellant was employed as a State Industries Supervisor from August 10, 1987, until his termination on August 18, 1988. IPI gave three reasons for Smidt's termination; (1) failing to properly report allegations of sexual misconduct between an inmate and a technician, (2) making an inappropriate remark to an inmate in the presence of other inmates, and (3) continuing to allow an inmate to serve him coffee which was in violation of the work rules and after a letter of clarification had been issued.

The incidents leading up to Smidt's termination began on August 1, 1988. On that date, the Appellant called Harry Cannon, who is responsible for IPI as Deputy Director of the Iowa Department of Corrections, and told Cannon "we have some of the same old problems ...; allegations involving a specific technician

and a specific inmate being too close."<sup>1</sup> Upon investigating the allegations, Cannon learned that Smidt had been told of the allegations three other times. These allegations had been made by both inmates and staff members over a three month period.

It was also during this investigation that Cannon learned that the inmate-clerk still served Smidt coffee. Earlier in the year it had been discovered that Smidt had given his inmate-clerk a coffee cup and a cigarette lighter.<sup>2</sup> These gifts were in violation of work rule 102.10.10(c) which prohibits employees from "giv(ing) or receiv(ing) from any resident or on behalf of any resident, cash, gifts, articles, favors or services."<sup>3</sup> After Cannon and Smidt concluded their discussion regarding the violation and purpose for the work rule, Smidt asked that his inmate-clerk get them coffee. Cannon then informed Smidt that this too violated work rule 102.10.10, and Cannon instructed Smidt to cease receiving coffee from his inmate-clerk. Smidt was issued a written reprimand for the cigarette lighter/coffee cup incident.<sup>4</sup>

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<sup>1</sup>Tr. at 59.

<sup>2</sup>There is conflicting testimony as to how the inmate-clerk got these two items. Smidt alleges that he intended to throw the cigarette lighter in the garbage and the inmate took it instead. He also alleges that this was only one of several coffee cups that he brought to work for inmates' use.

<sup>3</sup>See Joint Exhibit 7.

<sup>4</sup>See Joint Exhibit 6. Also included in this reprimand was a reprimand for Smidt's unauthorized use of State property. Smidt authorized a technician to jump start his car with a state vehicle, and in another incident Smidt had the technician, in a State vehicle, bring him fuel when he ran out of gas.

The final reason given by the State for Smidt's termination was the inappropriate remark made by Smidt to an inmate employee in the presence of other inmate employees. Smidt told the inmate: "you sure know how to swing that thing, but your skirt is just too short for the print shop."<sup>5</sup> This comment was made after Smidt had received training entitled "opposite sex". The purpose of this training was to define "what is expected of the professional when working in the correctional setting. Different situations were discussed in how to deal with residents of the opposite sex and how staff of the opposite sex should respond." Upon learning of the comment, both ICIW Superintendent Olk and Deputy Director Cannon talked to Smidt regarding this comment and its inappropriateness. No further disciplinary action was taken.

This was not the only incident where the Appellant made an inappropriate remark. While Smidt was in attendance at a step-three grievance hearing, coffee was spilled and Smidt said to let the female hearing officer clean up the coffee because "that is what women are for".<sup>6</sup> Smidt was orally reprimanded by Cannon for making such a comment.

ICIW Superintendent Olk was also concerned about Smidt's job performance. She described Smidt's performance as:

inconsistent, did not exercise or exhibit good decision-making skills or good judgment, at times immature. The shop itself seemed to be kind of in a state of confusion or disarray, not clear-cut expectations for inmates. I

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<sup>5</sup>Tr. at 306.

<sup>6</sup>Tr. at 32.

guess the best yardstick for me is how the inmates are behaving in a particular area, and it seemed oftentimes that the inmates were in control of the shop, ...<sup>7</sup>

In March, 1988 after talking to Smidt, Superintendent Olk conveyed these concerns to Smidt in writing. The concerns included smoking in the shop; duties of the inmate-clerk; and procedures on how to handle inappropriate behavior. Prior to that time, she had addressed her concerns orally to Smidt. On August 15, 1988, she addressed her concerns to Cannon which included Smidt's failure to enforce ICIW rules; Smidt's failure to supervise IPI technicians which included failure to resolve staff and personnel issues; and Smidt's failure to act in a professional manner as required by his supervisory position.

#### IV. CONCLUSIONS OF LAW

Section 19A.14(1), Code of Iowa (1987) provides that PERB hearings on merit appeals shall be conducted in accordance with PERB rules, and the Iowa Administrative Procedure Act, Chapter 17A, Code of Iowa (1987), and "the decisions rendered shall be based upon a standard of just cause". If PERB finds that the action taken by the appointing authority was for other than just cause, then an appropriate remedy is fashioned.<sup>8</sup>

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<sup>7</sup>Tr. at 132.

<sup>8</sup>The Act states that the Board may fashion an appropriate remedy if "the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause." See Iowa Code section 19A.14(1) (1987).

Therefore, it must be determined, in the instant case, whether just cause existed for the State to terminate the Appellant. In determining whether just cause exists, a number of factors must be examined.<sup>9</sup> These factors include:<sup>10</sup>

1. Whether there was a full and fair investigation before the decision to discipline the employee was made;
2. Whether reasons for the discipline were adequately communicated to the grievant;
3. The grievant's employment record, including years of service, performance, and disciplinary record;
4. Whether progressive discipline was followed, or not applicable under the circumstances; and
5. Mitigating circumstances which would justify a lesser penalty.

With respect to whether a full and fair investigation was conducted, the record reveals that an investigation began the day Smidt called Cannon and informed him of the allegations of sexual misconduct. The results of this investigation was discussed with the Appellant. Furthermore, Smidt does not allege that there was not a full and fair investigation of the incident. Therefore, it must be concluded that a full and fair investigation was made prior to the State's decision to terminate the Appellant.

Based upon the record, it is also clear that the reasons for the discipline were adequately communicated to the Appellant. On August 16, 1988, the State sent Smidt a letter delineating the

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<sup>9</sup>See Bell & State of Iowa (Department of Corrections), 88-MA-11 (Adjudicator's Decision); Wessling & Iowa Department of Transportation, 87-MA-10 (Adjudicator's Decision).

<sup>10</sup>Id.

reasons for his termination. Further there is no dispute as to whether these incidents occurred since Smidt testified that he admitted that these incidents in fact occurred under his supervision. Based upon the foregoing, I conclude that the reasons for the termination were adequately communicated to the Appellant, and that Smidt was discharged for these specific incidents, and not for other reasons.

The third factor in determining whether there was just cause to terminate Smidt is the Appellant's employment history. Smidt was employed by the State for approximately one year. Consequently, the only performance review/evaluation which had taken place occurred in April, 1988, when Smidt went from probationary to permanent employment status. On this evaluation he received a 3.15 which reflects competent performance.<sup>11</sup> However, in the section "AREAS FOR GROWTH/IMPROVEMENT" are the comments:

1. Needs more study of the rules involved in operating a prison.
2. Should pay regular attention to identifying, guiding, and if necessary, disciplining staff when staff behavior does not conform to rules or does not display good business practice.<sup>12</sup>

Prior to termination, Smidt had been disciplined on two separate occasions. The discipline included a written reprimand and a letter of clarification of expectations. The letter of

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<sup>11</sup>See Joint Exhibit 12.

<sup>12</sup>Id.

reprimand involved two incidents; Smidt's personal use of state property and the giving of a cigarette lighter to an inmate and the inmate's use of a coffee cup.<sup>13</sup> The letter of clarification of expectations involved in part: personnel problems and the need for Smidt to exert greater supervisory control and leadership; and the decline in the working relationship with ICIW due to: (1) giving certain inmates special privileges or having special access to the Appellant, (2) inmates being absent without the Appellant's knowledge, (3) Smidt's written comments concerning training which were not helpful, mature or appreciated by ICIW, and (4) consistently being late to ICIW staff meetings.<sup>14</sup> This letter of clarification was written approximately two months prior to Smidt's termination.

ICIW Superintendent Olk had also written a letter to Smidt conveying her concerns about certain printing shop practices. These included: smoking in the shop; job duties of the inmate-clerk; and the procedures on how to handle inappropriate behavior. In this letter, Olk also discussed the use of incident reports which were to be used to report major problems and concerns.<sup>15</sup>

Since one of the reasons Smidt was terminated was violations of work rules, it is necessary to determine whether Smidt had knowledge of the applicable work rules. In order to understand the working conditions, rules and regulations of a prison environment,

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<sup>13</sup>See Joint Exhibit 6 and fn. 1.

<sup>14</sup>See Joint Exhibit 8.

<sup>15</sup>See Joint Exhibit 13.



Smidt had undergone training both at Mitchellville and Anamosa. Furthermore, he acknowledged that he had received copies of the Employee Handbook and Employee Work Rules, and he had been instructed to read them.<sup>16</sup> Smidt had also been instructed, along with his staff, to reread and study the personnel policies of the institution.<sup>17</sup> Consequently, there is no doubt that the Appellant knew of the policies, procedures, and work rules and what was expected of him as a supervisor of both inmate and technical employees. He just did not follow them.

The fourth factor used to determine just cause is whether progressive discipline was followed or is applicable. The concept of progressive discipline is embodied in the rules of the Iowa Department of Personnel. See 581 Iowa Admin. Code 11.2. The purpose of progressive discipline is to correct an employee's behavior rather than merely to punish. See Bell & State of Iowa (Department of Corrections), 88-MA at (Adjudicator's Decision). Normally progressive discipline results in penalties becoming more severe.

In the instant case, it is undisputed that the discipline was not progressive. The State alleges that no purpose would have been served by employing progressive discipline, therefore, progressive discipline was not necessary. The Appellant alleges that the discipline in this case was too severe.

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<sup>16</sup>See Joint Exhibit 9.

<sup>17</sup>See Joint Exhibit 5.

Work rule 102.10.3(c) provides that "unusual situations or events should be reported immediately to the next higher authority and action as appropriate should be taken; ..." The Appellant violated this work rule when he failed to report immediately the allegations of sexual misconduct. This violation did not occur once, but three times and over a three month period of time.

Smidt argues that there are mitigating circumstances which should justify a lesser penalty. He contends that an "investigation" was conducted each time the allegations arose but that he determined the allegations to be rumors, and once the allegations were substantiated, he took steps to report the incidents. However, an allegation of sexual misconduct between an inmate and employee is a very serious matter which should not be decided solely by Smidt, but through the institutional procedure delineated in work rule 102.10(3)(c). It is also important that the Appellant did not fail to report just one allegation of sexual misconduct, but three separate allegations which occurred over a three month period of time. Not reporting these allegations/rumors was a clear violation of this work rule.

Moreover, this was not the only incident of failure to follow work rules. Work rule 102.10(10)(c) provides in part that "unofficial/unauthorized associations with inmates are prohibited and include: giv(ing) or receiv(ing) from any resident cash, gifts, articles, favors, or services...." The Appellant argues that he did not violate the work rules because the inmate-clerk asked him if he wanted coffee, and that he did not request the

coffee. Receiving coffee from an inmate is a favor bestowed on an employee by an inmate, and consequently, a violation of a work rule. Furthermore, Cannon had discussed this behavior with Smidt two months prior, and a letter of clarification had been issued.

In a prison environment, it is important that institutional policies, procedures and work rules are followed. This is to ensure the safety of the inmates and civilians both inside and outside the prison walls, and failure to follow them may result in prison unrest. Smidt had been aware since mid-March that he needed to improve his supervisory skills and that he needed to follow the institution's policies, procedures and work rules. However, it is clear from the record that he was unable to do so. His failure to follow the work rules did not occur once, but a number of times. The most serious of these violations was the failure to report the allegations of sexual misconduct which occurred three times over a three month period. Smidt's "investigation" of the allegations did not relieve him of the responsibility to report these incidents. In addition, there was the inappropriate remark made by Smidt to the inmate-employee.

Upon examination of these incidents in toto, the record demonstrates that the State had just cause to terminate the Appellant, and had no recourse but to terminate Mr. Smidt for his complete disregard for the work rules, policies and procedures of the Institution.

Having reviewed each of the arguments raised by the Appellant, I conclude that the Appellee, State of Iowa, specifically the

Department of Corrections, has established just cause for its termination of Spurgeon M. Smidt effective August 18, 1988.

V. AWARD

Based upon the foregoing, the Appellant's appeal is denied.

DATED at Des Moines, Iowa this 28th day of November, 1989.

Susan M. Bolte  
SUSAN M. BOLTE  
ADMINISTRATIVE LAW JUDGE

cc: Spurgeon M. Smidt  
Carolyn Coorman  
Herb Rogers, Sr.

The undersigned hereby certifies that the foregoing instrument is a true and correct copy of record of all of the proceedings in this matter, enclosing the same in an envelope addressed to the attorney at his residence, and that the same is being filed of record herein. Witness my hand and seal of the Department of Corrections, Iowa, at Des Moines, Iowa, on the 28th day of Nov, 1989.

Susan M. Bolte